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ABSTRACT

This issue memorandum describes Constitutional Amendment A, an initiative in South Dakota that, if approved, would prohibit taxation of real property for school purposes. The report provides background information on Constitutional Amendment A, which reads as follows: "The legislature shall make such provision by general taxation as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state. Real property shall not be subject to taxation for school purposes." Supporters began collecting signatures in 1995 and turned in the signed petitions in 1996, in time for the 1998 election. The property tax is the main source of revenue for local units of government in South Dakota and the issue of replacement revenue will become an important issue if the amendment is passed. The sales and use tax is the only current state-revenue source that raises an amount of money equivalent to the amount of property taxed currently levied by schools. Proponents of the amendment believe property taxes are too high and there is too much government waste. Opponents contend that education will be hurt by the amendment because there is no replacement revenue proposed. How the amendment will affect existing bonds is discussed. (RJM)

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South Dakota Legislative Research Council

Issue Memorandum 98-13

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CONSTITUTIONAL AMENDMENT A: PROHIBIT PROPERTY TAXES FOR SCHOOL FUNDING

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CONSTITUTIONAL AMENDMENT A: PROHIBIT PROPERTY TAXES FOR SCHOOL FUNDING

Introduction

Debates and votes on property tax issues are not something new to South Dakotans. During the 1998 general election, South Dakota voters will once again have an opportunity to express their opinion about property taxes. Constitutional Amendment A would prohibit taxation of real property for school purposes. This issue memorandum provides background information on Constitutional Amendment A, considers the fiscal impact of Constitutional Amendment A, explains some arguments by proponents and opponents of the issue, and discusses two sections of law related to the issue of school bond obligation.

Background

The supporters of Constitutional Amendment A filed the full text of their petition with the South Dakota Secretary of State on April 3, 1995, and began gathering signatures. According to §2-1-2.1 of South Dakota Codified Laws, in order to place a constitutional amendment on the ballot for the next general election (November 5, 1996, in this instance), organizers would have had to file the signed petitions at least one year before the 1996 general election or by November 5, 1995. When not enough signatures were gathered in time to place the amendment on the 1996 general election ballot, organizers continued to collect signatures in order to place the amendment on the ballot for the 1998 general election. State law permits signatures for initiative petitions to be collected for one year following the filing of the full text (§2-1-6.2). The organizers of Constitutional Amendment A turned in the signed petitions to the Secretary of State on April 1, 1996.

Constitutional Amendment A prohibits taxation of real property for school purposes. The people of South Dakota initiated Constitutional Amendment A and the amendment will be on the ballot for the 1998 general election held November 3, 1998, unless withdrawn by the sponsors. If South Dakota voters approve Constitutional Amendment A, Article VIII, Section 15 of the South Dakota Constitution would read as follows:

> The legislature shall make such provision by general taxation as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state. Real property shall not be subject to taxation for school purposes.

For purposes of comparison, Article VIII, Section 15 of the South Dakota Constitution currently reads as follows:

The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state. The Legislature is empowered to classify properties within school districts for purposes of school taxation, and may constitute agricultural property a separate class. Taxes shall be uniform on all property in the same class.

Fiscal Impact

The property tax is the main source of revenue for local units of government (e.g., city, county, school, and township). Table 1 shows the taxes levied by local governments.

Table 1. Taxes Levied by Local Governments - 1997

Local Unit of Government	Amount Taxed	Percent of Total
County	$132,306,002	23.94%
Municipalities	$63,030,246	11.41%
Schools	$341,703,332	61.84%
Townships	$8,935,430	1.62%
Special Assessments	$6,597,665	1.19%
Total	$552,572,675	100.00%

Source: South Dakota Department of Revenue – 1997 Annual Report

If South Dakota voters approve Constitutional Amendment A, real property would no longer be subject to taxation for school purposes. One can see from the above table that in 1997 property taxes levied by schools accounted for $341,703,332 or approximately sixty-two percent of the total property taxes levied.

The issue of replacement revenue will certainly be debated by proponents and opponents of Constitutional Amendment A. The following paragraph illustrates two potential sources of revenue (i.e., the sales and use tax and a state personal income tax) that could replace the amount of money involved if voters approve Constitutional Amendment A. While there are certainly many other sources of revenue, the sales and use tax is the only current state revenue source that raises an amount of money equivalent to the amount of property taxes currently levied by schools. The personal income tax would be another revenue source capable of raising the necessary replacement funds.

For purposes of comparison, the current state sales and use tax of four percent generates approximately $400,000,000. If the voters approve Constitutional Amendment A and if the sales and use tax were deemed the appropriate mechanism for replacement revenue, an additional three and one-half percent sales and use tax on all goods and services currently taxed would be needed to replace the same amount of revenue currently levied by schools under the property tax. If a state personal income tax were deemed the appropriate mechanism for replacement revenue, a tax of approximately three percent on adjusted

gross income would be needed to replace the revenue currently levied by schools under the property tax. The personal income tax assumes no deductions and only personal income (not corporate income) would be taxed.

Obviously, there are a number of ways to structure a package of replacement revenue, too many to cover in this issue memorandum. The previous paragraph used only two examples to show the level of taxation that it would take for each revenue source to individually replace the property taxes currently levied by schools.

Arguments

The proponents of Constitutional Amendment A believe property taxes are too high and there is too much government waste. The proponents view recent efforts by the Governor and the Legislature to reduce property taxes as inadequate; therefore, Constitutional Amendment A is needed. The proponents also believe that since education is guaranteed by the South Dakota Constitution, there will be funds available for education.

The opponents believe that education will be hurt because there is no replacement revenue proposed in Constitutional Amendment A. The opponents also believe that Constitutional Amendment A is just a way to get a state income tax in South Dakota. Finally, the opponents would like the Governor and Legislature to continue working on the property tax issue.

The School Bond Issue

If voters approve Constitutional Amendment A, what will happen to the current school bond obligations that are financed with property tax revenue? It appears that the South Dakota Constitution may address this issue in Article XIII, Section 5. That section of the South Dakota Constitution reads as follows:

> Article XIII, Section 5. Any city, county, town, school district or any other subdivision incurring indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrepealable until such debt be paid.

A section of South Dakota Codified Laws has some similar language to the above section of the South Dakota Constitution. Section 13-16-10 reads as follows:

> § 13-16-10. At or before the issuing of any bonds the school board shall provide for the collection of an annual tax sufficient to pay the interest and principal thereof when due, for the entire term of years for which said bonds are to run, by proper resolution, copy of which shall be filed with the county auditor. All such levies when legally made shall be irrepealable until such debt shall be paid or sufficient moneys have been accumulated to pay such debt, and shall be exclusive of the maximum levy provided for other school district funds.

It appears that these bonds would need to be paid before repealing any law related to financing the bonds. If the voters approve

Constitutional Amendment A, certain school districts may continue to levy property taxes in order to pay bond obligations.

Summary

Constitutional Amendment A will be on the ballot for the 1998 general election. If approved by the voters, real property will no longer be subject to taxation for school purposes. The most recent property tax statistics reveal that school levies account for $341,703,332, or approximately sixty-two percent of all property tax dollars. An additional sales and use tax of three and one-half percent or a personal income tax of approximately three percent of adjusted gross income would raise nearly the same amount of revenue that schools levied in property taxes during 1997. If voters approve Constitutional Amendment A, certain school districts may continue to levy property taxes in order to pay bond obligations.

This issue memorandum was written by David Becker, Senior Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.